IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2446 of 2020
and
W.M.P.No.2842 of 2020

Amit Trading Company,
Represented by its Proprietor,
Sundarlal Changia,
86, Gandhipuram Mill Street,
Erode – 638 003. .. Petitioner

Vs.

State Tax Officer,
Park Road Circle,
Erode. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in his TNGST 2861057/2003-04 dated 18.12.2019 and quash the same.

For Petitioner	:	Mr.Sriram.U for Mr.N.Inbarajan
For Respondent	:	Ms.Amirtha Dinakaran Government Advocate

ORDER

The petitioner is challenging the impugned order of the respondent bearing: TNGST:2861057/2003-04, dated 18.12.2019

2.A similar issue was decided by this Court in **Sunrise Foods Private Limited Vs. Assistant Commissioner (CT) (FAC), Park Road Assessment Circle, Erode**, [(2020) 80 GSTR 156 (Mad)] and the said order has been modified by the Hon'ble Division Bench of this Court in **Assistant Commissioner (CT) (FAC), Park Road Assessment Circle, Erode Vs. Sunrise Foods Private Limited**, [(2020) 104 GSTR 518 (Mad)]. The operative portion of the judgment of the Hon'ble Division Bench of this Court reads as under:

> " ...
>
> *7.After elaborately hearing the learned Additional Advocate General appearing for the appellant and Mr.N.Prasad, learned counsel appearing for the respondent, we are of the view that the prayer sought for in the writ petitions was to quash an order of assessment and the preliminary submission was on assumption of jurisdiction by the Assessing Officer to revise the assessment. Therefore, the lis before the Court was as to whether the revision of assessment was valid and whether*

there were any procedural impropriety committed by the Assessing Officer. In such circumstances, we are of the view that a finding regarding taxability of the product or otherwise may not be required to be given at that stage as the adjudicatory process is yet to be completed. We say so because the learned Writ Court has ultimately remanded the matter to the Assessing Officer to take a fresh decision. However the Court has circumscribed the limits of the decision and in what manner it is required to be taken. We are of the view that when the matter stands remanded to the authority, an open remand would be more appropriate, especially when the counter affidavit filed by the appellant was a very brief counter affidavit and the preliminary objection taken by the appellant was that the writ petitions are not maintainable and the respondent should have filed an appeal under Section 51 of the Act. Therefore, we are of the view that the matter should go back to the Assessing Officer for a fresh decision on merits and in accordance with law without being influenced by any of the observations in the order impugned before us or any findings that might have been recorded by the Enforcement Wing Officials. The Assessing Officer is reminded of his powers that he is an independent authority to take a decision in the matter based on the facts and law which is placed before him.

8.In the result, the writ appeals are partly allowed and the order and direction issued in the writ petitions in so far as it remands the matter to the Assessing Officer is sustained and all other observations and findings stand vacated and the appellant Assessing Officer is directed to take an independent decision *uninfluenced by any of the observations contained in the impugned order or in the report or proceedings of the Enforcement Wing Officials, afford an opportunity of personal hearing to the respondent and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."*

3.In view of the above, the impugned order is set aside and the case is remitted back to the respondent to pass fresh order keeping note of the status of this Court rendered in **Sunrise Foods Private Limited Vs. Assistant Commissioner (CT) (FAC), Park Road Assessment Circle, Erode**, [(2020) 80 GSTR 156 (Mad)], which was modified by the Hon'ble Division Bench of this Court in **Assistant Commissioner (CT) (FAC), Park Road Assessment Circle, Erode Vs. Sunrise Foods Private Limited**, [(2020) 104 GSTR 518 (Mad)].

4.Considering the fact that the dispute pertaining to the year 2003-2004, the officer shall endeavour to dispose of the proceedings within a period of three months from the date of receipt of a copy of this order. Needless to state that before passing such order, the petitioner shall be heard.

5.Accordingly, the Writ Petition stands allowed with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.07.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

State Tax Officer,
Park Road Circle,
Erode.

C.SARAVANAN, J.

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